

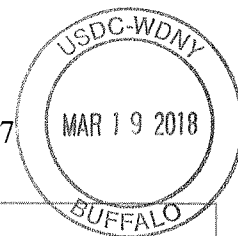
U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Buffalo)
CRIMINAL DOCKET FOR CASE #: 1:15-cr-00227-CJS-HBS All Defendants

Case title: USA v. Petix

Date Filed: 12/09/2015

Magistrate judge case number: 1:15-mj-02140-HBS

Date Terminated: 11/06/2017



Date Filed	#	Docket Text
12/04/2015	<u>1</u>	COMPLAINT as to Richard V. Petix (1). (GAI) [1:15-mj-02140-HBS] (Entered: 12/05/2015)
12/04/2015		Arrest of Richard V. Petix. (GAI) [1:15-mj-02140-HBS] (Entered: 12/05/2015)
12/04/2015	2	Minute Entry for proceedings held before Hon. Hugh B. Scott: Initial Appearance as to Richard V. Petix held on 12/4/2015. AFPD Passafiume appears only as <i>amicus</i> today; Atty Leonardo is retained. Deft advised of charges, possible penalties, and rights inc. right to preliminary hearing. Deft acknowledges receipt of complaint and waives further reading. Govt moves for detention. Parties proceed by proffer. Deft also faces VOSR warrant from Judge Siragusa in Case No. 6:06-cr-06007. Court orders deft detained w/o prejudice to answer VOSR warrant in Rochester Monday at 9:00 AM. Preliminary Hearing with attorney appearance and bail argument set for 12/16/2015 10:00 AM before Hon. Hugh B. Scott. APPEAR: W. Xiang (AUSA); F. Passafiume (AFPD) (<i>amicus</i>) for deft; deft present; C. Middlebrooks and D. Palmer (USPO). (Court Reporter FTR Gold.)(GAI) [1:15-mj-02140-HBS] (Entered: 12/05/2015)
12/09/2015	<u>3</u>	INDICTMENT as to Richard Petix (1) count(s) 1. (SG) (Entered: 12/10/2015)
12/09/2015	4	TEXT ORDER OF REFERRAL Hon. Hugh B. Scott, United States Magistrate Judge, is hereby designated to act in this case as follows:All pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including all pre-trial matters that a Magistrate Judge may hear and determine pursuant to 28 U.S.C. Section 636(b)(1)(A), and those which a Magistrate Judge may hear and thereafter file a report and recommendation for disposition pursuant to Section 636(b)(1)(B).All procedural aspects of matters properly before the Magistrate Judge under this Order, including scheduling and the filing of briefs or other supporting material, shall be determined by the Magistrate Judge.All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. IT IS SO ORDERED.. Signed by Hon. Richard J. Arcara on 12/09/15.(SG) (Entered: 12/10/2015)
12/11/2015	5	NOTICE OF HEARING as to Richard Petix: Arraignment (replacing preliminary hearing) set for 12/16/2015 10:00 AM before Hon. Hugh B. Scott. (GAI) (Entered: 12/11/2015)
12/15/2015	6	***CALENDAR NOTICE: Due to a calendar conflict, tomorrow's Arraignment (set for 12/16/2015) will be delayed one hour to 11:00 AM. Issued by Hon. Hugh B. Scott on

		12/15/2015.(GAI) (Entered: 12/15/2015)
12/16/2015	<u>7</u>	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott: Arraignment as to Richard Petix (1) Count 1 held on 12/16/2015.</p> <p>Deft advised of charges, possible penalties, and rights. Deft acknowledges receipt of indictment, waives further reading, and enters plea of not guilty.</p> <p>Govt moves for detention for same reasons as stated for complaint, and based on VOSR warrant from Judge Siragusa. Deft questions whether offense charged constitutes a crime of violence. Court wants verified bail report before proceeding further.</p> <p>Detention Hearing set for 12/17/2015 10:30 AM. Time remains excluded because the Govt's oral motion for detention remains pending.</p> <p>APPEAR: W. Xiang (AUSA); S. Leonardo for deft; deft present. (Court Reporter FTR Gold.)(GAI) (Entered: 12/16/2015)</p>
12/16/2015	<u>8</u>	<p>***CALENDAR NOTICE: At the request of defense counsel and with no objection from the Government, tomorrow's Detention Hearing (set for 12/17/2015) will be delayed to 03:00 PM. Issued by Hon. Hugh B. Scott on 12/16/2015.(GAI) (Entered: 12/16/2015)</p>
12/17/2015	<u>9</u>	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott: Detention Hearing as to Richard Petix held on 12/17/2015.</p> <p>Parties proceed by proffer. Court wants bail report updated with information from family if possible. Detention Hearing continuation set for 12/21/2015 09:30 AM. Time remains excluded because the Govt's oral motion for detention remains pending.</p> <p>APPEAR: W. Xiang (AUSA); M. Flowerday for S. Leonardo for deft; deft present; C. Middlebrooks (USPO). (Court Reporter FTR Gold.)(GAI) Modified on 12/26/2015 to correct spelling of defense counsel's name (GAI). (Entered: 12/18/2015)</p>
12/21/2015	<u>10</u>	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott: Detention Hearing as to Richard Petix held on 12/21/2015.</p> <p>Further proffer from the parties. Court decides to defer to Judge Siragusa's detention decision in pending VOSR matter in Case No. 6:06-cr-06007; deft detained on that basis only as of now.</p> <p>Court sets pretrial schedule. Discovery completed by 1/20/2016. Motions due by 2/24/2016. Responses due by 3/10/2016. Oral Argument set for 3/15/2016 10:00 AM. Time excluded 12/21/2015 through 2/24/2016 in the interest of justice for discovery review and motion preparation. Govt to submit order.</p> <p>APPEAR: W. Xiang (AUSA); M. Flowerday for S. Leonardo for deft; deft present; C. Middlebrooks (USPO). (Court Reporter FTR Gold.)(GAI) Modified on 12/26/2015 to correct spelling of defense counsel's name (GAI). (Entered: 12/21/2015)</p>
12/23/2015	<u>11</u>	<p>SPEEDY TRIAL ORDER as to Richard Petix: 12/21/2015 through 2/24/2016. Signed by Hon. Hugh B. Scott on 12/23/2015.(GAI) (Entered: 12/26/2015)</p>
01/12/2016	<u>12</u>	<p>Arrest Warrant Returned Executed on 12/4/2015 in case as to Richard Petix. (GAI) (Entered: 01/13/2016)</p>
02/12/2016	<u>13</u>	<p>First MOTION to Vacate <i>For Revocation of Magistrate Payson's Order Detaining the Defendant Without Bail Pending Trial</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit Attorney Affidavit, # <u>2</u> Certificate of Service Certificate of Service, # <u>3</u> Exhibit Exhibit</p>

		A, # <u>4</u> Exhibit Exhibit B, # <u>5</u> Exhibit Exhibit C, # <u>6</u> Exhibit Exhibit D)(Leonardo, Stephen) (Entered: 02/12/2016)
02/12/2016	14	<p>TEXT ORDER as to Richard Petix RE: <u>13</u> First MOTION to Vacate <i>For Revocation of Magistrate Payson's Order Detaining the Defendant Without Bail Pending Trial</i> filed by Richard Petix, Motions terminated as to Richard Petix: <u>13</u> First MOTION to Vacate <i>For Revocation of Magistrate Payson's Order Detaining the Defendant Without Bail Pending Trial</i> filed by Richard Petix.</p> <p>Counsel's office has advised chambers and the Clerk's Office by telephone that this motion was filed inadvertently in this case, and that it was intended for Case No. 06-CR-6007. Accordingly, the motion is administratively terminated in this case without decision. Counsel will re-file in Case No. 06-CR-6007 as needed.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 2/12/2016.(GAI) (Entered: 02/12/2016)</p>
02/24/2016	<u>15</u>	<p>First MOTION for Discovery by Richard Petix. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit Indictment, # <u>3</u> Exhibit February 2016 email correspondence)(Leonardo, Stephen). Added MOTION for Bill of Particulars, MOTION for Disclosure, MOTION to Compel, MOTION to Suppress, MOTION for preservation of rough notes, MOTION for Leave to File further motions/reliefs on 2/25/2016 (SG). (Entered: 02/24/2016)</p>
02/25/2016		<p>E-Filing Notification: reliefs added to docket entry, for future reference, all reliefs in motion must be selected. <u>15</u> First MOTION for Discovery MOTION for Bill of Particulars MOTION for Disclosure MOTION to Compel MOTION to Suppress MOTION for Leave to File (SG) (Entered: 02/25/2016)</p>
03/09/2016	<u>16</u>	<p>SUPERSEDING INDICTMENT as to Richard Petix (1) count(s) 1s, 2s. (SG) (Entered: 03/10/2016)</p>
03/10/2016	17	<p>TEXT ORDER as to Richard Petix RE: <u>16</u> Superseding Indictment.</p> <p>Next week's oral argument is converted to an Arraignment and will occur on 3/15/2016 at 10:00 AM.</p> <p>The pretrial schedule is vacated. At arraignment, the parties should be ready to discuss new scheduling and the need, if any, for revised pretrial motions.</p> <p>Time remains excluded because the current pretrial motions remain pending.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 3/10/2016.(GAI) (Entered: 03/10/2016)</p>
03/15/2016	18	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott: Arraignment as to Richard Petix (1) Count 1,1s,2s held on 3/15/2016.</p> <p>Deft advised of charges and rights. Deft acknowledges receipt of superseding indictment, waives further reading, and enters plea of not guilty.</p> <p>Court sets new schedule. Discovery completed by 4/18/2016. Motions due by 5/25/2016. Responses due by 6/8/2016. Oral Argument set for 6/9/2016 10:00 AM. Time excluded 3/15/2016 through 5/25/2016 in the interest of justice for discovery review and motion preparation. Govt to submit order.</p> <p>RE: Detention, Gov't notes that deft has been detained in this case in deference to detention order in related VOSR proceedings in Case No. 06-CR-6007. Deft asks to</p>

		<p>continue this arrangement; Gov't seeks separate finding for this case. Court adopts bail report and finds flight risk by preponderance but w/o prejudice.</p> <p>APPEAR: W. Xiang (AUSA); M. Flowerday for S. Leonardo for deft; deft present. (Court Reporter FTR Gold.)(GAI) (Entered: 03/15/2016)</p>
03/23/2016	<u>19</u>	SPEEDY TRIAL ORDER as to Richard Petix: 3/15/2016 through 5/25/2016. Signed by Hon. Hugh B. Scott on 3/23/2016.(GAI) (Entered: 03/23/2016)
05/24/2016	<u>20</u>	First MOTION for Extension of Time to File by Richard Petix. (Attachments: # <u>1</u> Affidavit Attorney Declaration)(Leonardo, Stephen) (Entered: 05/24/2016)
05/25/2016	21	<p>TEXT ORDER granting <u>20</u> Motion for Extension of Time to File as to Richard Petix (1). New schedule to follow.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 5/25/2016.(GAI) (Entered: 05/25/2016)</p>
05/25/2016	22	<p>TEXT ORDER as to Richard Petix setting new pretrial schedule.</p> <p>Motions due by 7/29/2016. Responses due by 8/17/2016. Oral Argument re-set for 8/24/2016 at 10:00 AM. Time remains excluded because some pretrial motions are pending but also is excluded 5/25/2016 through 7/29/2016 in the interest of justice for discovery review and motion preparation if no early resolution occurs.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 5/25/2016.(GAI) Modified on 5/25/2016 to add "because some pretrial motions are pending" (GAI). (Entered: 05/25/2016)</p>
07/29/2016	<u>23</u>	Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit Attorney Affidavit)(Leonardo, Stephen) (Entered: 07/29/2016)
08/17/2016	<u>24</u>	RESPONSE in Opposition by USA as to Richard Petix re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> (Xiang, Wei) (Entered: 08/17/2016)
08/24/2016	25	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott:Oral Argument held on 8/24/2016.</p> <p>Parties proceed to argument. Among other points raised, deft confirms that he is not seeking a bill of particulars for Count 2 of superseding indictment.</p> <p>Govt requests a week to file a response to remaining defense issues. Court allows Govt to file on or before 8/31/2016. Time remains excluded because pretrial motions remain pending.</p> <p>APPEAR: W. Xiang (AUSA); S. Leonardo for deft; deft present. (Court Reporter FTR Gold.)(GAI) (Entered: 08/24/2016)</p>
08/31/2016	<u>26</u>	RESPONSE to Motion by USA as to Richard Petix re <u>15</u> First MOTION for Discovery MOTION for Bill of Particulars MOTION for Disclosure MOTION to Compel MOTION to Suppress MOTION for Leave to File (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Xiang, Wei) (Entered: 08/31/2016)
09/14/2016	<u>27</u>	<p>ORDER as to Richard Petix RE: <u>15</u> MOTION to Suppress.</p> <p>Affidavit due by 10/4/2016. Hearing conditionally set for 10/18/2016 at 10:30 AM.</p>

		Signed by Hon. Hugh B. Scott on 9/14/2016.(GAI) (Entered: 09/14/2016)
09/14/2016	28	***Evidentiary Hearing set for 10/18/2016 10:30 AM before Hon. Hugh B. Scott. (GAI) (Entered: 09/14/2016)
10/11/2016	29	<p>TEXT ORDER as to Richard Petix RE: Scheduling.</p> <p>The hearing that the Court set conditionally for 10/18/2016 at 10:30 AM is converted to a status conference (same date and time) to confirm defendant's intentions going forward. The Government will arrange to produce the defendant.</p> <p>Time remains excluded because pretrial motions remain pending.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 10/11/2016.(GAI) (Entered: 10/11/2016)</p>
10/18/2016	30	<p>Minute Entry for proceedings held before Hon. Hugh B. Scott:Status Conference as to Richard Petix held on 10/18/2016.</p> <p>Atty Lembke appears today with Atty Leonardo. Today's appearance is noted but formal notice of appearance will be needed.</p> <p>Deft confirms that he is withdrawing his motion to suppress (part of Dkt. No. 15) in its entirety. Deft also wants to file an additional briefing. Briefing to be filed on or before 10/26/2016. Gov't response, if desired, to be filed on or before 11/7/2016. All remaining pretrial motions will be deemed submitted as of 11/7/2016.</p> <p>Time remains excluded because pretrial motions remain pending.</p> <p>APPEAR: W. Xiang (AUSA); S. Leonardo and M. Lembke for deft; deft present.(Court Reporter FTR Gold.)(GAI) (Entered: 10/18/2016)</p>
10/27/2016	<u>31</u>	NOTICE by USA as to Richard Petix re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> , 30 Status Conference, Set Deadlines, Terminate Motions, Speedy Trial - Excludable Start, Add and Terminate Attorneys,,,,,,,,,,,,, <i>No Supplemental Briefing</i> (Xiang, Wei) (Entered: 10/27/2016)
10/28/2016	<u>32</u>	MOTION for Extension of Time to File <i>Supplemental Brief/Memorandum in Support of Motion for Dismissal of Count 2 of Superseding Indictment</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 10/28/2016)
10/31/2016	33	<p>TEXT ORDER granting <u>32</u> Motion for Extension of Time to File as to Richard Petix (1).</p> <p>Defendant will file supplemental briefing on or before 11/2/2016. The matter will be deemed submitted upon filing.</p> <p>SO ORDERED. Issued by Hon. Hugh B. Scott on 10/31/2016.(GAI) (Entered: 10/31/2016)</p>
11/01/2016	<u>34</u>	NOTICE OF ATTORNEY APPEARANCE: Matthew R. Lembke appearing for Richard Petix (<i>Co-Counsel with Stephen M. Leonardo, Esq.</i>) (Attachments: # <u>1</u> Certificate of Service)(Lembke, Matthew) (Entered: 11/01/2016)
11/03/2016	<u>35</u>	MEMORANDUM/BRIEF (<i>Supplemental Submission on Motion to Dismiss Count Two of Superseding Indictment</i>) by Richard Petix (Attachments: # <u>1</u> Certificate of Service) (Lembke, Matthew) (Entered: 11/03/2016)

12/01/2016	<u>36</u>	REPORT AND RECOMMENDATIONS as to Richard Petix RE: <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> . Objections due per 28 U.S.C. § 636(b) and Fed. R. Crim. P. 59. Signed by Hon. Hugh B. Scott on 12/1/2016.(GAI) (Entered: 12/01/2016)
12/01/2016	<u>37</u>	DECISION AND ORDER adjudicating non-dispositive motions in <u>15</u> Motion for Discovery as to Richard Petix. Signed by Hon. Hugh B. Scott on 12/1/2016.(GAI) (Entered: 12/01/2016)
12/05/2016	<u>38</u>	MOTION to Vacate <i>Order Detaining the Defendant Pending Trial</i> , MOTION for Release from Custody , MOTION Vacate Order Detaining Defendant; Release of Defendant on Conditions; Expedited Relief <i>on Motions</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit /Affirmation of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 12/05/2016)
12/06/2016	39	TEXT ORDER deferring ruling on <u>38</u> Motion to Vacate, <u>38</u> Motion for Release from Custody as to Richard Petix. To the extent that defendant seeks something from this Court, the argument rests heavily on the pending Report and Recommendation. Prudence warrants waiting for proceedings with the Report and Recommendation to run their course. SO ORDERED. Issued by Hon. Hugh B. Scott on 12/6/2016.(GAI) (Entered: 12/06/2016)
12/06/2016	40	TEXT ORDER: the Clerk shall transfer the case to Judge Siragusa. SO ORDERED. Issued by Hon. Richard J. Arcara on December 6, 2016. (WJG) -CLERK TO FOLLOW UP- (Entered: 12/06/2016)
12/06/2016		Case as to Richard Petix assigned to Hon. Charles J. Siragusa. Hon. Richard J. Arcara no longer assigned to the case. (SG) (Entered: 12/07/2016)
12/07/2016		NOTICE OF HEARING ON MOTION in case as to Richard Petix <u>38</u> MOTION to Vacate <i>Order Detaining the Defendant Pending Trial</i> MOTION for Release from Custody MOTION Vacate Order Detaining Defendant; Release of Defendant on Conditions; Expedited Relief <i>on Motions</i> : Motion Hearing set for 12/7/2016 10:30 AM before Hon. Charles J. Siragusa. (KAP) (Entered: 12/07/2016)
12/07/2016	41	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Richard Resnick, AUSA appearing on behalf of government. Stephen Leonardo, Esq. and Matthew Lembke, Esq. appearing with defendant. Ivette Hernandez appearing for Probation. Motion Hearing as to Richard Petix held on 12/7/2016 re <u>38</u> MOTION to Vacate <i>Order Detaining the Defendant Pending Trial</i> MOTION for Release from Custody MOTION Vacate Order Detaining Defendant; Release of Defendant on Conditions; Expedited Relief <i>on Motions</i> filed by Richard Petix. Court denies application. Defendant remains in custody. Objections to <u>36</u> REPORT AND RECOMMENDATIONS as to Richard Petix RE <u>23</u> Supplemental MOTION to Dismiss Second Count of Indictment due by 12/14/2016. Court will thereafter schedule further appearance in this matter. (Court Reporter Christi Macri.)(KJA) Modified on 12/9/2016 (KJA). (Entered: 12/09/2016)
12/09/2016		E-Filing Notification: Amended text in 41 Minute Entry to reflect appearance by U.S. Probation (KJA). (KJA) (Entered: 12/09/2016)
12/14/2016	<u>42</u>	OBJECTION TO REPORT AND RECOMMENDATIONS <u>36</u> by USA as to Richard Petix (Attachments: # <u>1</u> Exhibit 1)(Xiang, Wei) (Entered: 12/14/2016)

12/28/2016	<u>43</u>	MOTION for Leave to File <i>Response to Government's Objections to Magistrate's Report and Recommendation</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit /Affirmation of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 12/28/2016)
12/29/2016	44	TEXT ORDER granting <u>43</u> Motion for Leave to File as to Richard Petix (1). Pursuant to Federal Rules of Criminal Procedure 45 and 59, Defense Counsel's timely request for an extension of time until December 30, 2016, to respond to the Government's objections is granted. See <i>United States v. Thymaras</i> , No. CR-14-50063-JLV, 2016 WL 3221642 at *11 (D.S.D. Jun. 10, 2016) (Fed. R. Crim. P. 59 derived in part from Fed. R. Civ. P. 72 which permits responses to the other party's objections); see also <i>United States v. Rice</i> , No. CRIM.A 09-91-DLB-JGW, 2010 WL 1418425 at *5 (E.D. Ky. Mar. 17, 2010), report and recommendation adopted, No. CRIM.A 09-91-DLB, 2010 WL 1418424 (E.D. Ky. Apr. 6, 2010) (same). Signed by Hon. Charles J. Siragusa on 12/29/16.(KAP) (Entered: 12/29/2016)
12/29/2016	<u>45</u>	First MOTION for Extension of Time to File Response/Reply by Richard Petix. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Certificate of Service)(Leonardo, Stephen) (Entered: 12/29/2016)
01/03/2017	46	TEXT ORDER granting <u>45</u> Motion for Extension of Time to File Response/Reply as to Richard Petix (1) to 1/6/17.. Signed by Hon. Charles J. Siragusa on 1/3/17.(KAP) (Entered: 01/03/2017)
01/06/2017	<u>47</u>	Second MOTION for Extension of Time to File Response/Reply by Richard Petix. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Certificate of Service)(Leonardo, Stephen) (Entered: 01/06/2017)
01/09/2017	48	TEXT ORDER granting <u>47</u> Second MOTION for Extension of Time to File Response/Reply filed by Richard Petix. Signed by Hon. Charles J. Siragusa on 1/9/2017. (KJA) (Entered: 01/09/2017)
01/12/2017	<u>49</u>	Third MOTION for Extension of Time to File Response/Reply as to <u>42</u> Objection to Report and Recommendations by Richard Petix. (Attachments: # <u>1</u> Affidavit /Affirmation of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 01/12/2017)
01/13/2017	50	TEXT ORDER granting <u>49</u> Motion for Extension of Time to File Response/Reply as to Richard Petix (1) by 1/17/17.. Signed by Hon. Charles J. Siragusa on 1/13/17.(KAP) (Entered: 01/13/2017)
01/13/2017		Set/Reset Deadlines re Motion or Report and Recommendation in case as to Richard Petix <u>36</u> REPORT AND RECOMMENDATIONS as to Richard Petix re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> Objections due fourteen days from receipt.. Replies due by 1/17/2017. (KAP) (Entered: 01/13/2017)
01/17/2017	<u>51</u>	Fourth MOTION for Extension of Time to File Response/Reply as to <u>42</u> Objection to Report and Recommendations by Richard Petix. (Attachments: # <u>1</u> Affidavit /Affirmation of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 01/17/2017)
01/19/2017	52	TEXT ORDER granting <u>51</u> Fourth MOTION for Extension of Time to File Response/Reply as to Richard Petix to 1/20/2017. Signed by Hon. Charles J. Siragusa on 1/19/17.(KJA) (Entered: 01/20/2017)
02/03/2017	<u>53</u>	LETTER ORDER as to Richard Petix granting defendant's request for extension of time to file response. Response is due 2/6/2017. Signed by Hon. Charles J. Siragusa on 2/2/17. (KJA) (Entered: 02/03/2017)

02/06/2017	<u>54</u>	RESPONSE in Opposition by Richard Petix re <u>36</u> REPORT AND RECOMMENDATIONS as to Richard Petix re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> Objections due fourteen days from receipt. (Attachments: # <u>1</u> Certificate of Service)(Lembke, Matthew) (Entered: 02/06/2017)
02/13/2017	<u>55</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of MOTION as to Richard Petix held on 8/24/16 before Magistrate Judge Scott. Court Reporter/Transcriber Karen J. Bush, Telephone number 585-613-4312. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/6/2017. Redacted Transcript Deadline set for 3/16/2017. Release of Transcript Restriction set for 5/15/2017. (SG) Modified on 2/13/2017 (SG). (Entered: 02/13/2017)
02/13/2017	<u>56</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of STATUS CONFERENCE as to Richard Petix held on 10/18/16 before Magistrate Judge Scott. Court Reporter/Transcriber Karen J. Bush, Telephone number 585-613-4312. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/6/2017. Redacted Transcript Deadline set for 3/16/2017. Release of Transcript Restriction set for 5/15/2017. (SG) (Entered: 02/13/2017)
03/03/2017	<u>57</u>	DECISION AND ORDER as to Richard Petix, ORDER TO CONTINUE - Ends of Justice as to Richard Petix Time excluded from 3/8/17 until 4/22/17.. The Court, having now reviewed all pre and post R & R submissions believes that it would benefit from oral argument before rendering its decision. Accordingly, the Court prospectively concludes, pursuant to 18 U.S.C. § 3161(h)(7)(A) & (B), that the ends of justice are served by the grant of a 45 day exclusion from March 8, 2017 to April 22, 2017, and that such exclusion outweighs the interests of both the public and the defendant in a more speedy trial. As explained above, the Court bases its determination on the complex issue relating to what qualifies as money or funds in the age of the internet, the potentially far reaching effect of the Courts decision, and the advisability of oral argument. If the defendant and/or the government object to the Courts interests of justice exclusion, they must notify the Court in writing of their objection by Monday March 6, 2017, by 12:00 pm. Otherwise, the Courts Judicial Assistant, Kelly Pruden, will contact the parties to arrange a date and time for oral argument. Signed by Hon. Charles J. Siragusa on 3/3/17.(KAP) (Entered: 03/03/2017)
03/03/2017	58	TEXT ORDER as to Richard Petix re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> filed by Richard Petix, (Motion Hearing set for 3/9/2017 11:00 AM before Hon. Charles J. Siragusa.). Signed by Hon. Charles J. Siragusa on 3/3/17.(KAP) (Entered: 03/03/2017)
03/09/2017	59	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Wei Xiang, AUSA appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. Oral Argument as to Richard Petix held on 3/9/2017 re <u>23</u> Supplemental MOTION to Dismiss <i>Second Count of Indictment</i> filed by Richard Petix. Court reserves decision to allow parties an opportunity to attempt to reach a resolution in this matter. Speedy trial time excluded. Government to submit Order to the Court for signature. Status Conference set for 4/6/2017 10:15 AM before Hon. Charles J. Siragusa to determine if case can be resolved. If no resolution is reached, Court will issue a written decision (Court Reporter Briana Jeffords/Edith Forbes Court Reporting Services.)(KJA) (Entered: 03/10/2017)
03/14/2017	<u>60</u>	SPEEDY TRIAL ORDER AND ORDER TO CONTINUE - Ends of Justice as to

		Richard Petix Time excluded from 3/9/17 until 4/6/17.. Signed by Hon. Charles J. Siragusa on 3/14/17.(KAP) (Entered: 03/14/2017)
04/06/2017	<u>61</u>	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Wei Xiang, AUSA and Richard Resnick, AUSA appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. Status Conference as to Richard Petix held on 4/6/2017. The parties do not reach a resolution. Defendant orally withdraws <u>23</u> Supplemental MOTION to Dismiss Second Count of Indictment as to Richard Petix and requests trial date. It will not be necessary for Court to issue decision re <u>36</u> REPORT AND RECOMMENDATIONS re <u>23</u> Supplemental MOTION to Dismiss Second Count of Indictment. Government to prepare an Order, settle with defense counsel, and submit it to the Court for signature. Court sets Jury Trial to commence on 5/1/2017 at 9:00 AM before Hon. Charles J. Siragusa and will issue a Pre-trial Order. Pending supervised release violation in Case No. 06-CR-6007 is adjourned without date. (Court Reporter FTR GOLD.)(KJA) (Entered: 04/10/2017)
04/10/2017	<u>62</u>	PRE-TRIAL ORDER as to Richard Petix. Jury Selection and Trial set for 5/1/2017 09:00 AM before Hon. Charles J. Siragusa. Pre-trial submissions due 4/17/2017. Signed by Hon. Charles J. Siragusa on 4/6/17.(KJA) (Entered: 04/10/2017)
04/13/2017	<u>63</u>	TEXT ORDER as to Richard Petix. The Court declines to adopt the Report and Recommendations filed on 12/1/2016, ECF No. <u>36</u> , since it has been rendered moot by the defendant's withdrawal of <u>23</u> Motion to Dismiss Second Count of Indictment, on 4/6/2017, ECF No. <u>61</u> . Signed by Hon. Charles J. Siragusa on 4/13/2017.(KJA) (Entered: 04/13/2017)
04/17/2017	<u>64</u>	Proposed Voir Dire by USA as to Richard Petix (Xiang, Wei) (Entered: 04/17/2017)
04/17/2017	<u>65</u>	WITNESS LIST by USA as to Richard Petix (Xiang, Wei) (Entered: 04/17/2017)
04/17/2017	<u>66</u>	Proposed Jury Instructions by USA as to Richard Petix (Xiang, Wei) (Entered: 04/17/2017)
04/17/2017	<u>67</u>	EXHIBIT LIST by USA as to Richard Petix (Xiang, Wei) (Entered: 04/17/2017)
04/19/2017	<u>68</u>	MOTION in Limine <i>re Business Records</i> by USA as to Richard Petix. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Xiang, Wei) (Entered: 04/19/2017)
04/24/2017		NOTICE OF HEARING as to Richard Petix. Plea Agreement Hearing set for 4/26/2017 11:00 AM before Hon. Charles J. Siragusa. (KJA) (Entered: 04/24/2017)
04/26/2017	<u>69</u>	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Wei Xiang, AUSA and Richard Resnick appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. Plea Hearing as to Richard Petix held on 4/26/2017. Plea entered by Richard Petix (1) without a Plea Agreement - Guilty Count 1s and 2s of the Superseding Indictment. PROBATION NOTIFIED OF PLEA. Sentencing set for 8/14/2017 09:15 AM before Hon. Charles J. Siragusa. Defense counsel makes oral application for defendant's release pending Sentencing. Court denies application. (Court Reporter Briana Jeffords/Edith Forbes Reporting Services.)(KJA) (Entered: 04/27/2017)
04/27/2017	<u>70</u>	SENTENCING GUIDELINE ORDER as to Richard Petix. Sentencing set for 8/14/2017 at 9:15 a.m. before Hon. Charles J. Siragusa. Signed by Hon. Charles J. Siragusa on 4/26/17.(KJA) (Entered: 04/27/2017)
04/28/2017	<u>71</u>	CALCULATION OF MAXIMUM SENTENCE AND SENTENCING GUIDELINE RANGE by USA (SG) (Entered: 05/01/2017)
06/16/2017	<u>72</u>	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Richard Petix. (cannito,

		jennifer) (Entered: 06/16/2017)
06/22/2017	<u>73</u>	MOTION GOVERNMENT'S MOTION FOR A PRELLIMINARY ORDER OF FORFEITURE AND MEMORANDUM OF LAW IN SUPPORT THEREOF by USA as to Richard Petix. (Attachments: # <u>1</u> Attachment Exhibits)(Kaufman, Richard) (Entered: 06/22/2017)
06/27/2017	<u>74</u>	NOTICE OF ATTORNEY APPEARANCE Richard D. Kaufman appearing for USA. (Kaufman, Richard) (Entered: 06/27/2017)
07/12/2017	<u>75</u>	PRELIMINARY ORDER OF FORFEITURE as to Richard Petix (1). Signed by Hon. Charles J. Siragusa on 7/11/2017.(KJA) (Entered: 07/12/2017)
07/17/2017	<u>76</u>	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Richard Petix (Xiang, Wei) (Entered: 07/17/2017)
07/17/2017	<u>77</u>	MOTION for Extension of Time to File <i>Statement of Party and Objections to PSR</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit in Support of Motion Extension of Time, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 07/17/2017)
07/18/2017	78	TEXT ORDER granting <u>77</u> Motion for Extension of Time to File as to Richard Petix (1). Signed by Hon. Charles J. Siragusa on 7/18/17.(KAP) (Entered: 07/18/2017)
07/25/2017	<u>79</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Richard Petix held on 4/6/2017 before Judge Charles J. Siragusa. Court Reporter/Transcriber Karen J. Bush, Telephone number 585-613-4312. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/15/2017. Redacted Transcript Deadline set for 8/25/2017. Release of Transcript Restriction set for 10/23/2017. (NRE) (Entered: 07/25/2017)
07/25/2017	<u>80</u>	Second MOTION for Extension of Time to File <i>Statement of Parties and Objections to PSR</i> by Richard Petix. (Attachments: # <u>1</u> Affidavit of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 07/25/2017)
07/26/2017	81	TEXT ORDER granting <u>80</u> Motion for Extension of Time to File as to Richard Petix (1). Signed by Hon. Charles J. Siragusa on 7/26/17.(KAP) (Entered: 07/26/2017)
07/28/2017	<u>82</u>	STATEMENT WITH RESPECT TO SENTENCING FACTORS by Richard Petix (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 07/28/2017)
07/30/2017	<u>83</u>	MEMORANDUM/BRIEF <i>Response to Objections</i> <u>82</u> by USA as to Richard Petix (Xiang, Wei) (Entered: 07/30/2017)
08/03/2017	<u>84</u>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Richard Petix. (cannito, jennifer) (Entered: 08/03/2017)
08/07/2017	<u>85</u>	RECOMMENDATION (Sealed) as to Richard Petix. (cannito, jennifer) (Entered: 08/07/2017)
08/09/2017	<u>86</u>	MOTION to Adjourn of Sentencing , MOTION for Extension of Time to File by Richard Petix. (Attachments: # <u>1</u> Affidavit /Declaration of Matt Lembke in Support of Motion, # <u>2</u> Certificate of Service)(Lembke, Matthew) (Entered: 08/09/2017)
08/10/2017	87	TEXT ORDER as to Richard Petix re <u>86</u> MOTION to Adjourn of Sentencing MOTION for Extension of Time to File filed by Richard Petix. Court grants application. Status Conference set for 8/14/2017 09:15 AM before Hon. Charles J. Siragusa. Sentencing date to be rescheduled at time of status conference. Signed by Hon. Charles J. Siragusa on 8/10/17.(KJA) (Entered: 08/10/2017)

08/14/2017	<u>88</u>	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Wei Xiang, AUSA and Richard Resnick, AUSA appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. David Spogen, USPO and Ivette Hernandez, USPO appearing for Probation. Status Conference as to Richard Petix held on 8/14/2017. Court reschedules Sentencing for 9/13/2017 11:00 AM before Hon. Charles J. Siragusa. Court will give opportunity for defendant to submit an Amended Statement and Objections to PSR, due by 8/18/2017. Government's response due by 8/28/2017. (Court Reporter Diane Martens.)(KJA) (Entered: 08/14/2017)
08/18/2017	<u>89</u>	OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Richard Petix <i>Amended and Supplemental Objections to PSR and Statement of Parties With Respect to Sentencing Factors</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Certificate of Service)(Lembke, Matthew) (Entered: 08/18/2017)
08/22/2017	<u>90</u>	DECLARATION by USA as to Richard Petix <i>DECLARATION OF PUBLICATION</i> (Kaufman, Richard) (Entered: 08/22/2017)
08/28/2017	<u>91</u>	MEMORANDUM IN OPPOSITION re <u>89</u> Objection to Presentence Investigation Report, <i>Response to Supplemental Objection</i> by USA as to Richard Petix (Xiang, Wei) (Entered: 08/28/2017)
09/01/2017	<u>92</u>	SENTENCING MEMORANDUM by Richard Petix (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Exhibit Exhibit E)(Leonardo, Stephen) (Entered: 09/01/2017)
09/13/2017	<u>93</u>	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Richard Resnick, AUSA, Grace Carducci, AUSA and Special Agent Brad Brechler appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. David Spogen, USPO and Ivette Hernandez, USPO appearing for Probation. Sentencing as to Richard Petix not held on 9/13/2017. Counsel is directed to submit letter memorandums to the Court by 10/13/2017 addressing the issues discussed in Court today. Sentencing is reset for 11/1/2017 09:00 AM before Hon. Charles J. Siragusa. Defendant is released on conditions previously set. (Court Reporter Brianna Jeffords/Edith Forbes Cout Reporting Services.)(KJA) Modified on 9/14/2017 (KJA). (Entered: 09/14/2017)
09/14/2017		E-Filing Notification: Amended text in 93 Minute Entry to reflect correct spelling of first name of defense counsel, Stephen Leonardo. (Entered: 09/14/2017)
09/27/2017	<u>94</u>	ORDER Setting Conditions of Release. Signed by Hon. Charles J. Siragusa on 9/15/2017. (BK) (Entered: 09/28/2017)
10/12/2017	<u>95</u>	NOTICE OF ATTORNEY APPEARANCE Grace M. Carducci appearing for USA. (Carducci, Grace) (Entered: 10/12/2017)
10/13/2017	<u>96</u>	MEMORANDUM/BRIEF <i>Letter Brief</i> by USA as to Richard Petix (Carducci, Grace) (Entered: 10/13/2017)
10/13/2017	<u>97</u>	MEMORANDUM/BRIEF <i>Regarding Sentencing and Forfeiture</i> by Richard Petix (Attachments: # <u>1</u> Certificate of Service)(Lembke, Matthew) (Entered: 10/13/2017)
10/14/2017	<u>98</u>	MEMORANDUM/BRIEF <i>Corrected Memorandum of Law Regarding Forfeiture and Sentencing</i> by Richard Petix (Attachments: # <u>1</u> Certificate of Service)(Lembke, Matthew) (Entered: 10/14/2017)
10/24/2017	<u>99</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of PLEA HEARING as to Richard Petix held on 4/26/17 before Judge Siragusa. Court Reporter/Transcriber Briana L. Jeffords, Telephone number 585-343-8612. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for

		Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/14/2017. Redacted Transcript Deadline set for 11/24/2017. Release of Transcript Restriction set for 1/22/2018. (SG) (Entered: 10/24/2017)
10/24/2017	<u>100</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of SENTENCING as to Richard Petix held on 9/13/17 before Judge Siragusa. Court Reporter/Transcriber Briana L. Jeffords, Telephone number 585-343-8612. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/14/2017. Redacted Transcript Deadline set for 11/24/2017. Release of Transcript Restriction set for 1/22/2018. (SG) (Entered: 10/24/2017)
11/01/2017	102	Minute Entry for proceedings held before Hon. Charles J. Siragusa: Wei Xiang, AUSA and Grace Carducci, AUSA appearing on behalf of government. Matthew Lembke, Esq. and Stephen Leonardo, Esq. appearing with defendant. Jessica Rider, USPO appearing for Probation. Sentencing held on 11/1/2017 for Richard Petix (1), Counts 1s and 2s. Defendant is sentenced to time served on each count to run concurrent (cost of incarceration fee waived); supervised release for a term of Three (3) years on Count 1s, and Three (3) years on Count 2s, to run concurrent, for a total term of Three (3) years; no fine; \$100 special assessment on each count, for a total of \$200; forfeiture of Samsung Galaxy S5 cellular telephone, ASUS laptop computer; and Six (6) thumb drives; and other conditions as set forth. (Court Reporter Brianna Jeffords/Edith Forbes Court Reporting Services.)(KJA) (Entered: 11/03/2017)
11/03/2017	<u>101</u>	FINAL ORDER OF FORFEITURE as to Richard Petix. Signed by Hon. Charles J. Siragusa on 11/3/17.(KAP) (Entered: 11/03/2017)
11/06/2017	<u>103</u>	ORDER as to Richard Petix. The Court having ordered the following transcripts from Edith Forbes Court Reporting Services: Court appearances held on April 26, 2017 and September 13, 2017; it is hereby ORDERED, that payment for said transcripts shall be made by the United States as provided in 28 U.S.C. §753(f). Signed by Hon. Charles J. Siragusa on 9/13/17.(KJA) (Entered: 11/06/2017)
11/06/2017	<u>104</u>	JUDGMENT as to Richard Petix (1), Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department.. Signed by Hon. Charles J. Siragusa on 11/3/17.(SG) (Entered: 11/08/2017)
11/17/2017	<u>105</u>	NOTICE OF APPEAL. (Attachments: # <u>1</u> Certificate of Service)(Lembke, Matthew) (Entered: 11/17/2017)
12/15/2017	<u>106</u>	MOTION for Leave to Appeal In Forma Pauperis by Richard Petix. (Attachments: # <u>1</u> Affidavit)(Slawinski, Steven) (Entered: 12/15/2017)
12/18/2017	<u>107</u>	ORDER granting <u>106</u> Motion for Leave to Appeal In Forma Pauperis as to Richard Petix (1). Signed by Hon. Charles J. Siragusa on 12/18/17.(KAP) -CLERK TO FOLLOW UP- (Entered: 12/18/2017)
01/17/2018	<u>108</u>	AMENDED JUDGMENT as to Richard Petix (1). Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. Signed by Hon. Charles J. Siragusa on 1/16/2017. (KLH) (Entered: 01/18/2018)

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**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of February, two thousand and eighteen.

United States of America,

Appellee,

v.

Richard Petix,

Defendant - Appellant.

ORDER

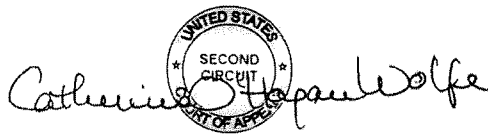
Docket No. 17-3774

Appellant moves for appointment of counsel for this appeal.

IT IS HEREBY ORDERED that the motion is GRANTED. Brendan White, White & White, 148 East 78th Street, New York, NY 10075, is assigned as new counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Attorney White is directed to review Local Rule 12.2 regarding the filing of Form B and Local Rule 31.2 regarding procedures for setting the filing dates for the submission of briefs.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".